IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No. 662/2007

Judgment delivered on: November 14, 2007

National Insurance Co. Ltd.
Division No. X, Flat No. 101-106,
1st Floor, N-1, BMC House
Connaught Place
Delhi ..... Appellant

Through: Ms.Shantha Devi Raman, Advocate.

versus

Sant Kumar & Ors. ..... Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

The present appeal is filed against the award of the Motor Accident Claims Tribunal dated 20.9.2007. The facts of the present case in nutshell are:-

On 5.11.2005 at about 2.00 p.m., deceased Shri Dheeraj Singh was travelling as a pillion rider on the motorcycle bearing registration No. DL-8S-AD 7165, which was being driven by his cousin Shri Sohan Pal, while going from Delhi to Ghaziabad. At about 2.00 p.m., they reached near Loni Road in front of Pasaunda, when a DTC bus bearing registration No. DL IP B 0606, which was being driven by respondent No.1 at a very high speed in rash and negligent manner on the wrong side of the road. The said DTC bus hit the motorcycle and as a result his cousin Sohan Pal sustained grevious injuries. The claim petition was filed on 2.6.2006 and the award was made on 20.9.2007. Aggrieved with the said award, the appellant insurance company has preferred this appeal.

Counsel for the appellant contends that the Tribunal has not taken into consideration the rational of the recent judgment of the Apex Court in the matter of **New India Assurance Co.Ltd. Vs. Satender & Ors.,** reported in **III (2007 ACC 46 (SC)**.

The contention of the counsel for the appellant is that the notional income of the deceased who was 16 years old was taken into consideration as per the Second Schedule of the Motor Vehicles Act and then the Tribunal has doubled the said notional income after taking into consideration the inflationary trends and rise in price index and not only this then again the said assumed income of Rs.30,000/- has been doubled as per the criteria laid down by the Supreme Court in **Sarla Dixit Vs.Balwant Yadav & Ors.,** ***1996 ACJ 581 (SC).***

I have heard the learned counsel for the appellant and have also perused the impugned award as well as judgment cited by the counsel for the appellant.

The deceased in the present case was 16 years

old student of XIth standard. It is thus an admitted case that the child was not employed anywhere and had no source of income. In such circumstances, the Tribunal has taken the notional income of the deceased at Rs.15,000/- per annum as provided in the Second Schedule of the Motor Vehicles Act. In **New India Assurance Co's case (Supra)**, accident of 9 years old child was involved and the notional income of Rs.15,000/- was applied. In the said case also the Tribunal had doubled the notional income to Rs. 30,000/- and thereafter the applicable multiplier was applied. The matter went before the Hon'ble Supreme Court after challenge was made by the Insurance Company and the Hon'ble Supreme Court upheld the contentions of the Insurance Company by holding that in the case of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. Relevant para 12 of the

aforesaid judgment is reproduced as under:

> "12. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."

Counsel for the appellant states that it is just possible that the said judgment was not brought to the notice of the Tribunal before passing of the impugned award. Since the Tribunal has not gone through the said judgment of the Apex Court, therefore, it would be appropriate to remand the matter back to the Tribunal for fresh consideration on that aspect of the matter.

With these directions, appeal is remanded back to

the Tribunal. The appellant to appear before the Tribunal on 22.11.2007.

Appeal stands disposed of accordingly.

November 14, 2007 **KAILASH GAMBHIR, J.**
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